

**ASSEMBLY BILL**

**No. 620**

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**Introduced by Assembly Member Negrete McLeod**

February 17, 2005

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An act to amend Sections 1335, 1336, 1337, 1339, and 1341 of the Penal Code, relating to criminal proceedings.

LEGISLATIVE COUNSEL'S DIGEST

AB 620, as introduced, Negrete McLeod. Criminal proceedings: examination of witnesses.

Existing law provides for the conditional examination of a witness by the defendant in all cases and by the people in cases where the punishment may be other than death. Existing law further provides that when the defendant has been charged with a serious felony, as defined, the people may have a witness examined conditionally if the people have evidence the life of the witness is in jeopardy.

This bill would eliminate the provisions that specifically authorizes conditional examinations in cases where the defendant has been charged with a serious felony and the life of the witness is in jeopardy.

Existing law provides that the defendant or the people may apply for an order that the witness be examined conditionally when the material witness is about to leave the state, or is so sick as to afford reasonable grounds he or she will be unable to attend the trial, or is a person 70 years of age or older, or a dependent adult. Further, existing law provides the people may apply for the conditional examination of a prosecution witness when there is evidence that the witness' life is in jeopardy.

This bill would lower the age at which a conditional examination application for a material witness may be made to 65 years of age or older.

Existing law outlines specified information that must be provided upon an affidavit when applying for a conditional examination, including the nature of the offense, the state of the proceedings in the action, witness information, and the specified grounds that make the conditional examination necessary.

This bill would specify that when a conditional examination is requested based on the belief that the life of a witness is in jeopardy, it must be the life of a prosecution witness that is in jeopardy.

Existing law directs that an order for an examination must be made by the court if it is satisfied that examination of the witness is necessary.

This bill would direct that an order for an examination must be made by the court if it is satisfied that the testimony of the witness is material to the defense or prosecution of the action and the grounds stated in the application are true.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1335 of the Penal Code is amended to  
2 read:

3 1335. ~~(a)~~—When a defendant has been charged with a public  
4 offense triable in any court, he or she in all cases, and the people  
5 in cases other than those for which the punishment may be death,  
6 may, if the defendant has been fully informed of his or her right  
7 to counsel as provided by law, have witnesses examined  
8 conditionally in his or her or their behalf, as prescribed in this  
9 chapter.

10 ~~(b) When a defendant has been charged with a serious felony,~~  
11 ~~the people may, if the defendant has been fully informed of his or~~  
12 ~~her right to counsel as provided by law, have a witness examined~~  
13 ~~conditionally as prescribed in this chapter if the people have~~  
14 ~~evidence that the life of the witness is in jeopardy.~~

15 ~~(c) As used in this section, “serious felony” means any of the~~  
16 ~~felonies listed in subdivision (e) of Section 1192.7 or any~~  
17 ~~violation of Section 11351, 11352, 11378, or 11379 of the Health~~  
18 ~~and Safety Code.~~

19 SEC. 2. Section 1336 of the Penal Code is amended to read:

1 1336. (a) When a material witness for the defendant, or for  
2 the people, is about to leave the state, or is so sick or infirm as to  
3 afford reasonable grounds for apprehension that he or she will be  
4 unable to attend the trial, or is a person—70 65 years of age or  
5 older, or a dependent adult, the defendant or the people may  
6 apply for an order that the witness be examined conditionally.

7 (b) When the people have evidence that the life of a  
8 prosecution witness is in jeopardy, the people may apply for an  
9 order that the witness be examined conditionally.

10 (c) As used in this section, “dependent adult” means any  
11 person who is between the ages of 18 and 70, who has physical  
12 or mental limitations which restrict his or her ability to carry out  
13 normal activities or to protect his or her rights, including but not  
14 limited to, persons who have physical or developmental  
15 disabilities or whose physical or mental abilities have diminished  
16 because of age. “Dependent adult” includes any person between  
17 the ages of 18 and 70 who is admitted as an inpatient to a  
18 24-hour facility, as defined in Sections 1250, 1250.2, and 1250.3  
19 of the Health and Safety Code.

20 SEC. 3. Section 1337 of the Penal Code is amended to read:

21 1337. The application shall be made upon affidavit stating all  
22 of the following:

- 23 (1) The nature of the offense charged.  
24 (2) The state of the proceedings in the action.  
25 (3) The name and residence of the witness, and that his or her  
26 testimony is material to the defense or the prosecution of the  
27 action.  
28 (4) That the witness is about to leave the state, or is so sick or  
29 infirm as to afford reasonable grounds for apprehending that he  
30 or she will not be able to attend the trial, or is a person—70 65  
31 years of age or older, or a dependent adult, or that the life of the  
32 prosecution witness is in jeopardy.

33 SEC. 4. Section 1339 of the Penal Code is amended to read:

34 1339. If the court or judge is satisfied that the ~~examination of~~  
35 ~~the witness is necessary~~ *testimony of the witness is material to*  
36 *the defense or the prosecution of the action and that the grounds*  
37 *stated in the application are true*, an order must be made that the  
38 witness be examined conditionally, at a specified time and place,  
39 and before a magistrate designated therein.

40 SEC. 5. Section 1341 of the Penal Code is amended to read:

1     1341. If, at the time and place so designated, it is shown to the  
2     satisfaction of the magistrate that the witness is not about to leave  
3     the state, or is not sick or infirm, or is not a person ~~70~~ 65 years of  
4     age or older, or a dependent adult, or that the life of the  
5     *prosecution* witness is not in jeopardy, or that the application was  
6     made to avoid the examination of the witness ~~on~~ at the trial, the  
7     examination cannot take place.

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